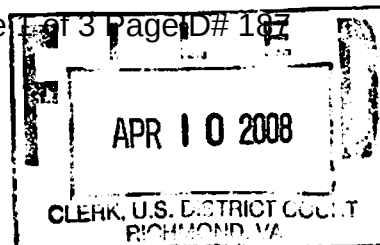


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



IN RE:

DIANE M. TARANGELO,

Debtor.

Case No. 05-42670-DOT

NASRIN MOAZZENI,

Appellant,

Case No. 3:08-CV-081-JRS

v.

KEITH L. PHILLIPS, TRUSTEE,

Appellee.

MEMORANDUM OPINION

THIS MATTER comes before the Court on an appeal from a bankruptcy proceeding pursuant to 28 U.S.C. § 158(a)(1). For the reasons stated below, the Court shall DISMISS this appeal for lack of jurisdiction.

On November 13, 2007, Appellant Nasrin Moazzeni filed with the bankruptcy court a notice of appeal of an order the court entered on September 28, 2007, a motion to extend time within which to appeal, a motion to reconsider the September 28, 2007 order, and a motion to extend time to file a motion to consider. Pursuant to Rule 8002(a) of the Federal Rules of Bankruptcy Procedure,¹ the bankruptcy court found that both the notice to appeal and the motion to extend the time within which to appeal were untimely. Phillips v. Moazzeni (In re Tarangelo), No. 06-3139-DOT, 2-3 (Bankr. E.D. Va. Dec. 13, 2007). Because the Appellant filed the notice of appeal prior to obtaining leave from

¹Rule 8002(a) provides, in relevant part, that "The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from." Bankr. R. 8002(a).

the bankruptcy court to do so, the Appellant's appeal was processed despite the bankruptcy court's order denying the Appellant an extension of time within which to file the appeal.

Without a timely filed notice of appeal, district courts lack jurisdiction over a bankruptcy appeal. Smith v. Dairymen, Inc., 790 F.2d 1107, 1110-11 (4th Cir. 1986) (holding that absent exceptional circumstances, "only a party who files a notice of appeal properly invokes the appellate jurisdiction of the district court"); Parker v. North Carolina Agr. Finance Auth., 341 B.R. 547, 554 (E.D. Va. 2006) (finding that because the appellant filed the notice of appeal seventeen days after the bankruptcy court entered its dismissal order, which is seven days later than Rule 8002(a)'s ten-day period, the district court lacked jurisdiction to hear the matter); see generally 10 COLLIER ON BANKRUPTCY ¶ 8002.03 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. Rev. June 2007) ("Unless an appeal is timely taken, the reviewing court lacks jurisdiction to hear it."). Thus, because the Appellant filed the notice of appeal in the instant case over a month after the bankruptcy court entered its order and the bankruptcy court denied Appellant's motion for an extension, the Court shall DISMISS this appeal for want of jurisdiction.²

An appropriate Final Order shall issue.

²The Court notes that Appellant has not filed a brief in this matter, even though the Clerk of this Court sent the Appellant a letter on February 1, 2008 stating that the record on appeal was filed and enclosed a copy of Rule 8009 of the Federal Rules of Bankruptcy Procedure. Rule 8009 requires an appellant to serve and file a brief within 15 days after the entry of the appeal on the docket of the district court. See Bankr. R. 8009. Failure to file a timely brief in accordance with Rule 8009 may result in dismissal where the district court either "(1) make[s] a finding of bad faith or negligence; (2) give[s] the appellant notice and an opportunity to explain the delay; (3) consider[s] whether the delay had any possible prejudicial effect on the other parties; or (4) indicate[s] that it considered the impact of the sanction and available alternatives." In re Serra Builders, Inc., 970 F.2d 1309, 1311 (4th Cir. 1992). Had the Court not dismissed the Appellant's case for want of jurisdiction pursuant to Bankr. R. 8002(a), it would have considered dismissing the case pursuant to Rule 8009 on the grounds of negligence as the Appellant is almost two months delinquent in filing a brief.

/s/
James R. Spencer
Chief United States District Judge

Entered this th10 day of April 2008